IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 10315 of 2003

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And

W.P. M.P.NO.12969 OF 2003

Between:
C.Raji Reddy s/o.Peddi Reddy,aged about 45 years,
Occupation:business,r/o.H.No.9-67,Dilsukhnagar,Hyderabad.

..... PETITIONER

AND
1.The Prudential Cooperative Bank Ltd.,
R.P.Road, Secunderabad Branch, Rep. through its
Assistant General Manager and Authorised Officer,

2.The Registrar, Cooperative Societies, A.P., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the proceedings dated 4-4-2003 issued by the 1st respondent Bank U/s.13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 and the threatened action of the respondents to take possession of the petitioner's mortgaged residential houses bearing H.No.9-67 and 9-67/1, situated at Dilsukhnagar,Uppal Mandal, Ranga Reddy District as arbitrary,illegal and violative of Art. 14 of the Constitution of India apart from violative of principles of natural justice and consequently direct the respondents herein not to take possession of the petitioner's securitised immovable property of residential houses bearing H.Nos.9-67 amd 9-67/1, Dilsukhnagar,Uppal Mandal,Ranga Reddy district and deal with the same under the provisions of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

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W.P.M.P.NO : 12969 of 2003

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.....RESPONDENTS

Petition under Section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to direct the respondents herein not to dispossess the petitioner from the residential house bearing Nos.9-67 and 9-67/1, Dilsukhnagar, Uppal Mandal, Ranga Reddy District pending disposal of the Writ Petition.

Counsel for the Petitioner in both:MR.L.PRABHAKAR REDDY

For the Respondent No.1 in both: MR.S.ASHOK ANAND KUMAR.

For the Respondent No.2 in both: Govt. Pleader for Cooperation.

The Court made the following ORAL ORDER:

(Per Hon'ble The Chief Justice)

1. In view of the decision rendered by the Hon'ble Supreme Court in Transfer Case (Civil) No.92-95 of 2002, dated 8th April, 2004 [MARDIA CHEMICALS LTD v UNION OF INDIA & ORS] upholding the constitutional validity of the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, barring sub-section (2) of Section 17 of the Act, which was declared as ultra vires of Article 14 of the Constitution of India, this petition deserves to be decided in terms of the said decision. The Supreme Court in MARDIA CHEMICALS case has held that before taking action by the Bank under the provisions of the Act, a notice of 60 days is required to be given by the bank and after the measures under Section 13 (2) of the Act have been taken, mechanism has been provided under Section 17 of the Act to approach Debts Recovery Tribunal. Supreme Court has further held thus:

> "1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceedings to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.
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> 2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of

the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

2 . In view of the decision of the Supreme Court upholding constitutional validity of the offending provisions of the Act, we dismiss the writ petition thereby reserving liberty to the petitioner to work out his/its remedies as provided under the Act including filing of appeal under Section 17 of the Act within the period of limitation prescribed therefor, to be counted from today.

3. In view of the dismissal of the writ petition, the interim directions stand vacated and the WPMP stands disposed of as such.

Dated: 16th June, 2004.
pnb

sd/-
ASSISTANT REGISTER

//TRUE COPY//

SECTION OFFICER

To:
1.The Assistant General Manager and Authorised Officer, the Prudential Cooperative Bank Ltd., R.P.Road, Secunderabad Branch.2 CC to
2.The Registrar, Cooperative Societies, Andhra Pradesh,Hyderabad.
3. Two CCs. to the Government Pleader for Cooperation, High Court Buildings,Hyderabad. (O.U.T.)
4. Two C.D. copies.